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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91216571
Party	Defendant Benchmark Young Adult School, Inc.
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Attachments	Benchmark Complaint.PDF(1471113 bytes) Benchmark Motion to Suspend.pdf(52703 bytes)

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15 **UNITED STATES DISTRICT COURT**
16 **SOUTHERN DISTRICT OF CALIFORNIA**

17 BENCHMARK YOUNG ADULT
18 SCHOOL, INC. dba BENCHMARK
19 TRANSITIONS,

20 Plaintiff,

21 vs.

22 LAUNCHWORKS LIFE SERVICES, LLC
23 dba MARK HOUSTON RECOVERY
24 CENTER and BENCHMARK
25 RECOVERY CENTER,

26 Defendant.

Case No. **'12CV2953 BTM BGS**

COMPLAINT

1. **FEDERAL TRADEMARK INFRINGEMENT (15 U.S.C. § 1114(1))**
2. **FALSE DESIGNATION OF ORIGIN (15 U.S.C. § 1125(a))**
3. **UNLAWFUL TRADE NAME USE (Cal. Bus. & Prof. Code § 14495)**
4. **CALIFORNIA COMMON LAW TRADEMARK INFRINGEMENT (Cal. Bus. & Prof. Code § 14200 *et seq.*)**
5. **UNFAIR COMPETITION AND UNFAIR BUSINESS PRACTICES (Cal. Bus. & Prof. Code § 17200 *et seq.*)**

DEMAND FOR JURY TRIAL

Complaint Filed: None Set
Trial Date: None Set

CALL &
JENSEN
EST. 1981

1 Plaintiff hereby alleges as follows:

2 **PRELIMINARY STATEMENT**

3 1. By this Complaint, Plaintiff Benchmark Young Adult School dba
4 Benchmark Transitions (“Plaintiff” or “Benchmark Transitions”) seeks injunctive relief,
5 damages, and other remedies provided by law to remedy injuries caused by Defendant
6 Launchworks Life Services, LLC dba Mark Houston Recovery Center and Benchmark
7 Recovery Center’s (“Defendant” or “Benchmark Recovery”) infringement of Plaintiff’s
8 distinctive trade/service marks and trade name, and for Defendant’s unfair competition
9 in violation of California and United States laws.

10 2. Plaintiff operates a residential transitional living program for older teens
11 and young adults. Plaintiff is primarily engaged in providing addiction recovery,
12 substance abuse treatment services, and related behavioral health services.

13 3. As part of its business, Plaintiff uses a number of trade- and service marks
14 which are more fully described below as the BENCHMARK Marks. Plaintiff has used
15 the “Benchmark” name in connection with its business and services since 1993.

16 4. Defendant operates an addiction recovery center in Austin, Texas known as
17 Benchmark Recovery Center, formerly known as the Mark Houston Recovery Center.
18 Defendant’s use of the name BENCHMARK RECOVERY CENTER and the
19 abbreviated name BENCHMARK has caused and will continue to cause confusion in
20 the marketplace.

21 **PARTIES**

22 5. Plaintiff is and was at all times mentioned in this Complaint a corporation
23 organized and existing under the laws of California, with its headquarters located at
24 25612 Barton Road, #286, Loma Linda, California 92354.

25 6. Defendant is, and was at all times mentioned in this complaint, a limited
26 liability company organized and existing under the laws of Texas, with its operations
27 located at 11503 Parsons Road, Manor, Texas 78653.
28

1 **JURISDICTION AND VENUE**

2 7. This is an action for federal trademark infringement pursuant to 15 U.S.C.
3 § 1114, false designation of origin under the Lanham Act pursuant to 15 U.S.C. § 1125,
4 California common law trademark infringement, unfair competition, California trade
5 name infringement, and unfair business practices under California Business &
6 Professions Code § 17200 *et seq.*

7 8. Jurisdiction in the United States District Court is proper under 28 U.S.C. §
8 1332 §§ 1121 and 1125, and 28 U.S.C. §§ 1331 and 1338(a), in that this case arises
9 under the Trademark Laws of the United States. The Court has jurisdiction over the
10 California trademark and unfair competition claims pursuant to 28 U.S.C. § 1338(b),
11 because these claims are joined with a substantial and related claim arising under the
12 Trademark Laws of the United States. Jurisdiction is also proper in that the Plaintiff and
13 Defendant are citizens of different states. Plaintiff is a California corporation with its
14 headquarters in this state; Defendant has its headquarters in Texas. The amount in
15 controversy exceeds the jurisdictional requirement of \$75,000—in an amount to be
16 proven at trial.

17 9. Venue is proper in this district under 28 U.S.C. § 1391(b) in that a
18 substantial part of the events giving rise to the claim occurred in this district. In
19 particular, because Plaintiff operates its business in this district, injury to Plaintiff
20 caused by Defendant's conduct occurred in this district as Defendant attended a trade
21 show in this district where Defendants launched the use of their infringing marks, and
22 the activities alleged herein.

23 10. Defendant is subject to specific personal jurisdiction in this district under
24 Federal Rules of Civil Procedure Rule 4(k)(1)(A) and California Code of Civil
25 Procedure § 410.10. On information and belief, Defendant has significant contacts with
26 California in that it advertises its services to California residents in this district via the
27 internet, mail, email, by attending conferences, and by face-to-face solicitation in this
28 district.

FACTUAL BACKGROUND

11. Plaintiff founded Benchmark Behavioral and Educational Services, Inc. in 1993.

12. By 1998, Benchmark Young Adult School was founded under the direction and expertise of its original owner, Jayne Selby-Longnecker, M.Ed.

13. Since that time, Benchmark Young Adult School has provided addiction recovery, substance abuse treatment, educational services and transitional living programs for troubled teens and young adults.

14. In fact, since 1993, Plaintiff, its customers and others began referring to Plaintiff and its services by the shortened trade name and service mark, BENCHMARK.

15. By virtue of continuous use of BENCHMARK in connection with addiction recovery, substance abuse treatment, and educational services, Plaintiff has acquired rights in and to the service mark BENCHMARK and has developed a solid reputation for quality and good will associated with the services offered under this mark and trade name.

16. By 2001, Plaintiff expanded its use of the BENCHMARK service mark and began to create a family of related BENCHMARK Marks. In addition to using BENCHMARK YOUNG ADULT SCHOOL, Plaintiff began using the term in connection with its program offerings, including but not limited to ACACIA INDEPENDENT LIVING BY BENCHMARK.

17. This use continued through 2009. At that time, Plaintiff again expanded its family of BENCHMARK Marks to include its new name and service mark, BENCHMARK TRANSITIONS.

18. Plaintiff expanded its curricula for addiction recovery, substance abuse treatment, educational services and transitional living programs and created a family of BENCHMARK TRANSITIONS branded programs and services.

19. The BENCHMARK TRANSITIONS branded programs include Plaintiff's "Benchmark Transitions" therapeutic services and clinical treatment, Plaintiff's

1 “Recovery by Benchmark” program, Plaintiff’s “Transitional Living Phases” program,
2 and “Acacia Independent Living By Benchmark,” an individualized life skills program.

3 20. Plaintiff continues to provide its services at its facility in Redlands,
4 California.

5 21. Plaintiff’s reputation for excellence as a provider of services for at risk
6 young people is known nationwide. Plaintiff’s clients come to California from all over
7 the country and from international locations to participate in Plaintiff’s specialized
8 programs.

9 22. Indeed, since 1993, in the field of addiction recovery and transitional living
10 services, the name and service mark BENCHMARK has always been firmly associated
11 with Plaintiff.

12 **PLAINTIFF’S SERVICE MARKS**

13 23. Plaintiff is the owner of multiple federally registered service marks that
14 generally cover addiction recovery, substance abuse treatment services, and related
15 behavioral health services recovery/substance abuse related treatment services,
16 including the following:

- 17 • BENCHMARK TRANSITIONS, U.S. Registration Number 4240373,
18 registration certificate attached as Exhibit A;
- 19 • RECOVERY BY BENCHMARK, U.S. Registration Number 4236260,
20 registration certificate attached as Exhibit B;
- 21 • BENCHMARK YOUNG ADULT SCHOOL, U.S. Registration Number
22 4240375, registration certificate attached as Exhibit C;
- 23 • BENCHMARK TRANSITIONS LIFE STRATEGIES FOR EMERGING
24 ADULTS, U.S. Registration Number 4240380, registration certificate
25 attached as Exhibit D; and

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- BENCHMARK TRANSITIONS LIFE STRATEGIES FOR EMERGING ADULTS (Design shown to the right), U.S. Registration Number 4236259, registration certificate attached as Exhibit E.



These trademarks are collectively referred to as the “BENCHMARK Marks.” A complete description of the services offered under these marks is provided within the registration certificates.

24. Prior to the registration of these marks, Plaintiff owned common-law rights in and to the unregistered trademarks for several years.

25. The BENCHMARK Marks pre-date the use in commerce of Defendant’s use of the name “Benchmark Recovery Center.”

26. The BENCHMARK Marks are inherently distinctive, and the registrations of these marks provide Plaintiff with a presumption of valid, enforceable rights.

DEFENDANT’S INFRINGING SERVICE MARK AND ACTIVITIES

27. For multiple years, Defendant was known as “Mark Houston Recovery.” Mark Houston Recovery offered various addiction recovery services under that business name. Indeed, Defendant and Plaintiff were in the same industry and knew of one another. Representatives from Mark Houston Recovery crossed paths with representatives of Plaintiff Benchmark Transitions at trade shows and industry-related events, and in more personal settings.

28. For example, in or around August, 2009, Plaintiff’s representatives of Benchmark Transitions met with representatives of Defendant, which at that time was going by the name Mark Houston Recovery Center. The meeting took place in California and included Mark Houston himself – the owner and founder of Mark Houston Recovery Center, and Jana Triplett, the marketing representative for Mark Houston Recovery Center. Ms. Triplett and Mr. Houston were well aware of Plaintiff’s use of the word “Benchmark” as a business name and service mark. Defendant was well aware that Benchmark Transitions was in the same line of business as Defendant.

1 29. Notwithstanding Defendant's knowledge of Plaintiff and its trade name
2 and service mark, Plaintiff has learned that Defendant changed its name from Mark
3 Houston Recovery Center to Benchmark Recovery Center in blatant disregard for
4 Benchmark Transitions' rights.

5 30. Defendant began marketing itself as Benchmark Recovery Center by late
6 2011.

7 31. Shortly thereafter, Plaintiff learned that this new Benchmark Recovery
8 planned to attend the National Conference on Addiction Disorders (NCAD) in San
9 Diego, California. Surprised by the news of the name change, Plaintiff sent a cease and
10 desist letter to Mark Houston's Benchmark Recovery, requesting that it cease all use of
11 Benchmark Recovery Center. A copy of this letter is attached as Exhibit F.

12 32. Defendant failed to cease use of the Benchmark Recovery Center name,
13 and in fact attended the trade show in San Diego as Benchmark Recovery Center
14 despite being on notice of Benchmark Transitions' service marks and trade name.

15 33. Defendant set up an information booth at the NCAD conference in San
16 Diego identifying and advertising their business and services under the Benchmark
17 Recovery Center name and mark.

18 34. Several conference attendees spoke to Plaintiff and expressed confusion as
19 to whether Plaintiff Benchmark Transitions was affiliated with the Benchmark
20 Recovery Center. Plaintiff received several inquiries and comments from individuals
21 who were familiar with both Plaintiff, who had long been known as Benchmark
22 Transitions and long been using that service mark and trade name, and Defendant—who
23 had formerly been known as Mark Houston Recovery, now using the service name
24 Benchmark Recovery.

25 35. In the months that followed, the confusion continued and Benchmark
26 Recovery failed to phase out use of the infringing mark and trade name.

27 ///

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1 36. By October and November 2011, Plaintiff received multiple calls from
2 associates in other addiction and recovery programs asking about the Benchmark
3 Recovery Center, believing that Plaintiff and Defendant may be affiliated.

4 37. Beginning in January 2012, on several occasions, staff for Best Notes (a
5 customer relationship software company that apparently both entities use) mistook
6 Plaintiff's staff for Benchmark Recovery's staff. In fact, Best Notes tried to add
7 Plaintiff's staff as users under the Benchmark Recovery settings. The result was that
8 when Plaintiff's staff attempted to use the software, the software provided information
9 about Benchmark Recovery instead of Benchmark Transitions.

10 38. In February 2012, Plaintiff discussed the issue with management at Best
11 Notes to advise them of the continued mistaken identity with Plaintiff's internal clients.
12 Best Notes took appropriate precautions, but Plaintiff has to specifically advise Best
13 Notes of this issue every time it calls for customer support, clearly indicating confusion
14 has been caused by Defendant's infringing use of marks similar to Plaintiff's service
15 mark.

16 39. Later, Plaintiff's representative attended a conference presented by the
17 National Association of Therapeutic Schools and Programs (NATSAP) in Florida. At
18 that conference, two educational consultants asked about what was happening with the
19 Benchmark Recovery Center in Texas, again thinking perhaps Plaintiff and Defendant
20 were affiliated.

21 40. In the months that followed, educational consultants, financial institutions
22 in the industry, and others expressed confusion attributable to Benchmark Recovery's
23 use of BENCHMARK. Benchmark Transitions learned that Benchmark Recovery was
24 obtaining financing after Clark Behavioral Loans thought the financing was for the
25 long-standing Benchmark Transitions rather than Benchmark Recovery.

26 41. These instances demonstrate that confusion is occurring, and also
27 demonstrate that Benchmark Recovery is benefitting from use of a trade name and
28 service mark that infringes Benchmark Transitions' rights.

48. Defendant has used and continues to use the name “Benchmark Recovery Center” in commerce in connection with services that are highly similar and overlapping with Plaintiff’s.

1 49. Plaintiff has not at any time consented to Defendant's use of the name
2 "Benchmark Recovery Center," or the shortened names "Benchmark Recovery" or
3 "Benchmark".

4 50. Defendant's use of the name "Benchmark Recovery Center," or the
5 shortened names "Benchmark Recovery" or "Benchmark" is likely to cause confusion,
6 or to cause mistake, or to deceive, and in fact has caused confusion in the marketplace.

7 51. Defendant's actions are intentional and willful. Defendant had notice of,
8 and actually knew of, Plaintiff's use of the word "Benchmark" to identify Plaintiff's
9 services prior to Defendant's adopting that term, and knew of Plaintiff's use of
10 Benchmark Transitions. Likewise, Defendant was on notice of the BENCHMARK
11 Marks. Despite this notice and knowledge, Defendant has refused to cease the
12 infringing activity and continues to infringe Plaintiff's trade name and service mark
13 rights.

14 52. As a proximate result of Defendant's acts, Plaintiff has suffered, and will
15 continue to suffer damage to its reputation and goodwill, injury to its current and
16 potential customer base, and a loss of revenue in an amount not yet determined.

17 53. Plaintiff is entitled to recover Defendant's profits and reasonable royalties
18 for the infringing use of Plaintiff's trade name and service marks, as well as damages,
19 all of which may be trebled as a result of Defendant's willful conduct.

20 54. Defendant's intentional and willful infringement has caused, and will
21 continue to cause irreparable harm to Plaintiff, for which Plaintiff has no adequate
22 remedy at law. Therefore, Plaintiff is entitled to injunctive relief that permanently bars
23 Defendant from use of the word "Benchmark" to identify its services.

24 55. Defendant's intentional actions render this an exceptional case, further
25 entitling Plaintiff to recovery of its attorneys' fees and costs of suit as detailed in 15
26 U.S.C. § 1117.

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SECOND CAUSE OF ACTION

(False Designation of Origin [Lanham Act, 15 U.S.C. § 1125(a)])

56. Plaintiff re-alleges each and every allegation set forth in Paragraphs 1 through 55, inclusive, and incorporates them as though fully set forth by this reference herein.

57. Long before Plaintiff applied for registration of the BENCHMARK Marks, Plaintiff had used those marks in commerce to identify its services.

58. Defendant's use of the name "Benchmark Recovery Center" is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Defendant with Plaintiff Benchmark Transitions.

59. Defendant's use of the name "Benchmark Recovery Center," or the shortened names "Benchmark Recovery" or "Benchmark" is likely to cause confusion, or to cause mistake, or to deceive as to the origin, sponsorship, or affiliation of Defendant's services and commercial activities by Plaintiff Benchmark Transitions.

60. Defendant's use of the name "Benchmark Recovery Center," or the shortened names "Benchmark Recovery" or "Benchmark" in commercial advertising or promotion, misrepresents the nature, characteristics, qualities, and/or geographic origin of Defendant's services and is merely an attempt to capitalize on the goodwill established by Plaintiff.

61. Defendant's conduct, after actual and constructive notice of Plaintiff's rights, is knowing and willful.

62. As a proximate result of Defendant's acts, Plaintiff has suffered, and will continue to suffer, damage to its reputation and goodwill, injury to its current and potential customer base, as well as a loss of revenue in an amount not yet determined.

63. Plaintiff is entitled to recover Defendant's profits and reasonable royalties for the infringing use of the name "Benchmark Recovery Center," and the shortened names "Benchmark Recovery" and "Benchmark", as well as damages, all of which may be trebled as a result of Defendant's willful infringement.

64. Defendant's intentional and willful infringement has caused, and will continue to cause irreparable harm to Plaintiff, for which Plaintiff has no adequate remedy at law. Therefore, Plaintiff is entitled to injunctive relief that permanently bars Defendant from use of the term "Benchmark" to identify its services.

65. Defendant's actions render this an exceptional case, further entitling Plaintiff to recovery of its attorneys' fees and costs of suit as detailed in 15 U.S.C. § 1117.

THIRD CAUSE OF ACTION

(Unlawful Trade Name Use Under Cal. Bus. & Prof. Code § 14495)

66. Plaintiff re-alleges each and every allegation set forth in Paragraphs 1 through 65, inclusive, and incorporates them as though fully set forth by this reference herein.

67. Long before Plaintiff applied for registration of the BENCHMARK Marks, Plaintiff had used those marks in commerce to identify its services and business.

68. Long before Plaintiff applied for registration of its BENCHMARK Marks, Plaintiff had used "Benchmark Young Adult School" and "Benchmark Transitions" as trade names.

69. Plaintiff is currently using "Benchmark Transitions" as its trade name, and has done so long before Defendant's use of "Benchmark Recovery Center," or the shortened names "Benchmark Recovery" or "Benchmark".

70. Indeed, Plaintiff has used the trade name "Benchmark" as a shortened version of its full business name. Therefore, consumers and industry members recognize Plaintiff's services as originating exclusively from "Benchmark".

71. Defendant's use of the name "Benchmark Recovery Center," or the shortened names "Benchmark Recovery" or "Benchmark" is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Defendant with Plaintiff. Indeed, Defendant has already caused such confusion.

1 72. Plaintiff recently learned that Defendant was referred to as “Benchmark” in
2 a reality television series regarding addiction recovery. Use of “Benchmark” as a trade
3 name for the same services provided by Benchmark Transitions, without authorization
4 or consent, is presumptive evidence of the unlawful use of such name.

5 73. Defendant’s use of the name “Benchmark Recovery Center,” or the
6 shortened names “Benchmark Recovery” or “Benchmark” is likely to cause confusion,
7 or to cause mistake, or to deceive as to the origin, sponsorship, or affiliation of
8 Defendant’s services and commercial activities by Plaintiff Benchmark Transitions.

9 74. Defendant’s use of the name “Benchmark Recovery Center,” or the
10 shortened names “Benchmark Recovery” or “Benchmark” in commercial advertising or
11 promotion, misrepresents the nature, characteristics, qualities, and/or geographic origin
12 of Defendant’s services and is merely an attempt to capitalize on the goodwill
13 established by Plaintiff and the services offered under Plaintiff’s trade name.

14 75. Defendant’s conduct, after actual and constructive notice of Plaintiff’s
15 rights, is knowing and willful.

16 76. As a proximate result of Defendant’s acts, Plaintiff has suffered, and will
17 continue to suffer, damage to its reputation and goodwill, injury to its current and
18 potential customer base, as well as a loss of revenue in an amount not yet determined.

19 77. Plaintiff is entitled to recover Defendant’s profits and reasonable royalties
20 for the infringing use of the trade name “Benchmark Recovery Center,” and shortened
21 names “Benchmark Recovery” and “Benchmark”.

22 78. Defendant’s intentional and willful infringement has caused, and will
23 continue to cause irreparable harm to Plaintiff, for which Plaintiff has no adequate
24 remedy at law. Therefore, Plaintiff is entitled to injunctive relief that permanently bars
25 Defendant from use of the term “Benchmark Recovery Center,” or the shortened names
26 “Benchmark Recovery” or “Benchmark” as trade names to identify its business and
27 services.
28

1 79. Plaintiff is entitled to recover damages for unlawful use of its trade name
2 in an amount to be proven at trial.

3
4 **FOURTH CAUSE OF ACTION**

5 **(California Common Law Trademark Infringement**

6 **[Cal. Bus. & Prof. Code § 14200 *et seq.*])**

7 80. Plaintiff re-alleges each and every allegation set forth in Paragraphs 1
8 through 79, inclusive, and incorporates them as though fully set forth by this reference
9 herein.

10 81. Plaintiff's use of the BENCHMARK Marks precedes Defendant's use of
11 the name "Benchmark Recovery Center," or the shortened names "Benchmark
12 Recovery" or "Benchmark".

13 82. Defendant's use of the name "Benchmark Recovery Center," or the
14 shortened names "Benchmark Recovery" or "Benchmark" is likely to cause confusion,
15 and indeed has caused confusion, as to Plaintiff's association, affiliation, sponsorship or
16 endorsement of Defendant and its services.

17 83. As a direct and proximate result of Defendant's infringement of Plaintiff's
18 common law service marks, Plaintiff has suffered and will continue to suffer loss of
19 income, profits and goodwill, and Defendant has and will continue to be unjustly
20 enriched by acquiring income, profits and goodwill to which it is not entitled.

21 84. Unless restrained, Defendant will continue the acts and conduct set forth in
22 this cause of action to Plaintiff's great and irreparable injury, for which damages will
23 not afford adequate relief. Plaintiff is therefore entitled to an injunction ordering
24 Defendant to cease and desist from its use of the term "Benchmark" to identify its
25 services and business.

26 85. Defendant committed its wrongful acts willfully after actual and
27 constructive notice of Plaintiff's rights. Defendant's conduct therefore justifies an
28 award of exemplary damages.

FIFTH CAUSE OF ACTION

(Unfair Business Practices [Cal. Bus. & Prof. Code § 17200 *et seq.*])

86. Plaintiff re-alleges each and every allegation set forth in Paragraphs 1 through 85 inclusive, and incorporates them as though fully set forth by this reference herein.

87. Defendant's marketing, selling and offering for sale services identified by the name "Benchmark Recovery Center," or the shortened names "Benchmark Recovery" or "Benchmark" constitutes unlawful, unfair or fraudulent business acts or practices within the meaning of California Business and Professions Code section 17200, in that they 1) infringe Plaintiff's rights in the BENCHMARK Marks, 2) seek to "pass off" Defendant's services as Plaintiff's services to capitalize on Plaintiff's reputation and goodwill, and 3) create confusion as to whether Plaintiff's services are Defendant's services, inhibiting Plaintiff's ability to control its own reputation.

88. Plaintiff has suffered injury in fact and has lost money or property as a result of Defendant's unfair competition in the form of damage to its good will, lost sales, and other actual damages.

89. The harm to Plaintiff and to members of the general public outweighs the utility of Defendant's business practices.

90. The unlawful, unfair, and fraudulent business practices of Defendant, as described in this Complaint, present a continuing threat to members of the public in that they are likely to cause confusion as to the source of Defendant's services in that the general public is likely to believe that Defendant's services originate from, or are affiliated or associated with Plaintiff, or are otherwise sponsored or endorsed by Plaintiff.

91. As a direct and proximate result of Defendant's wrongful acts as alleged in this Complaint, Defendant obtained unlawful profits to the detriment of Plaintiff.

92. Unless restrained, Defendant will continue the acts and conduct set forth in this cause of action, to Plaintiff's great and irreparable injury, for which damages will

not afford adequate relief. Plaintiff is therefore entitled to an injunction prohibiting Defendant's wrongful acts.

93. Defendant committed the wrongful acts willfully, intending to gain business and a share of the market by riding on Plaintiff's reputation and good will. Defendant's conduct justifies an award of exemplary damages.

94. Upon proof, Plaintiff is entitled to recover its costs, including attorneys' fees, under California Code of Civil Procedure Section 1021.5.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant as to all counts of its Complaint, as follows:

FOR ALL CAUSES OF ACTION:

1. Actual general and compensatory damages and royalties according to proof;
2. Reasonable attorney's fees and costs of suit;
3. Pre-judgment interest on all amounts claimed as permitted by law;
4. For temporary and permanent injunctive relief:
 - a. Enjoining Defendant to cease and desist from using the name "Benchmark Recovery Center," or the shortened names "Benchmark Recovery" or "Benchmark".
 - b. Enjoining Defendant to cease and desist from using the word "Benchmark" to identify its services;
 - c. Ordering Defendant to deliver up for destruction all products, brochures, marketing materials, and so forth bearing the name "Benchmark Recovery Center," or the shortened names "Benchmark Recovery" or "Benchmark" as an identification of Defendant's services;
 - d. Ordering Defendant to engage in corrective advertising to restore, to the fullest extent possible, the value of Plaintiff's marks;

1 5. Restitution and disgorgement of Defendant's profits unjustly obtained
2 through infringement of Plaintiff's rights;

3 6. Punitive or exemplary damages, including but not limited to treble
4 damages as a result of Defendant's willful infringement; and

5 Such other, further, and different relief as the Court may deem proper under the
6 circumstances.

7
8 Dated: December 11, 2012

CALL & JENSEN
A Professional Corporation
Scott P. Shaw
Deborah A. Gubernick
Samuel G. Brooks

9
10
11 By: /s/ Deborah A. Gubernick
12 Deborah A. Gubernick

13 Attorneys for Plaintiff Benchmark Young Adult
14 School, Inc. dba Benchmark Transitions

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all issues raised in the Complaint.

Dated: December 11, 2012

CALL & JENSEN
A Professional Corporation
Scott P. Shaw
Deborah A. Gubernick
Samuel G. Brooks

By: /s/ Deborah A. Gubernick
Deborah A. Gubernick

Attorneys for Plaintiff Benchmark Young Adult
School, Inc. dba Benchmark Transitions

EXHIBITS

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EXHIBIT A

United States of America

United States Patent and Trademark Office

BENCHMARK TRANSITIONS

Reg. No. 4,240,373

Registered Nov. 13, 2012

Int. Cls.: 41, 43 and 44

BENCHMARK YOUNG ADULT SCHOOL, INC. (CALIFORNIA CORPORATION), DBA
BENCHMARK TRANSITIONS
BENCHMARK TRANSITIONS
25612 BARTON ROAD, #286
LOMA LINDA, CA 92354

SERVICE MARK

PRINCIPAL REGISTER

FOR: LIFE COACHING SERVICES FOR YOUNG ADULTS RECOVERING FROM ADDICTION;
EDUCATIONAL SERVICES, NAMELY, GENERAL EDUCATIONAL COURSES AND BEHA-
VIORAL HEALTH SEMINARS AND WORKSHOPS, IN THE FIELD OF SUBSTANCE ABUSE,
IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 9-9-2009; IN COMMERCE 9-9-2009.

FOR: PROVIDING RESIDENTIAL HOMES AND HOUSING FOR AT-RISK CHILDREN AND
YOUTH, NAMELY, RESIDENTIAL, CO-EDUCATIONAL AND THERAPEUTIC TRANSITION-
AL LIVING PROGRAMS FOR YOUNG ADULTS, IN CLASS 43 (U.S. CLS. 100 AND 101).

FIRST USE 9-9-2009; IN COMMERCE 9-9-2009.

FOR: PALLIATIVE CARE SERVICES, NAMELY, RECOVERY AND AFTERCARE SERVICES
FOR YOUNG ADULTS SUFFERING FROM SUBSTANCE ABUSE; SUBSTANCE ABUSE
TREATMENT SERVICES AND RELATED COUNSELING; BEHAVIORAL HEALTH SER-
VICES, NAMELY, BEHAVIORAL TREATMENT SERVICES FOR YOUNG ADULTS, IN
CLASS 44 (U.S. CLS. 100 AND 101).

FIRST USE 9-9-2009; IN COMMERCE 9-9-2009.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PAR-
TICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 85-415,504, FILED 9-6-2011.

BENJAMIN OKEKE, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office

EXHIBIT B

United States of America

United States Patent and Trademark Office

RECOVERY BY BENCHMARK

Reg. No. 4,236,260

Registered Nov. 6, 2012

Int. Cls.: 41, 43 and 44

SERVICE MARK

PRINCIPAL REGISTER

BENCHMARK YOUNG ADULT SCHOOL, INC. (CALIFORNIA CORPORATION), DBA
BENCHMARK TRANSITIONS
BENCHMARK TRANSITIONS
25612 BARTON ROAD, #286
LOMA LINDA, CA 92354

FOR: LIFE COACHING SERVICES FOR YOUNG ADULTS RECOVERING FROM ADDICTION;
EDUCATIONAL SERVICES, NAMELY, GENERAL EDUCATIONAL COURSES AND BEHA-
VIORAL HEALTH SEMINARS AND WORKSHOPS, IN THE FIELD OF SUBSTANCE ABUSE,
IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 9-9-2009; IN COMMERCE 9-9-2009.

FOR: PROVIDING RESIDENTIAL HOMES AND HOUSING FOR AT-RISK CHILDREN AND
YOUTH, NAMELY, RESIDENTIAL, CO-EDUCATIONAL AND THERAPEUTIC TRANSITION-
AL LIVING PROGRAMS FOR YOUNG ADULTS, IN CLASS 43 (U.S. CLS. 100 AND 101).

FIRST USE 9-9-2009; IN COMMERCE 9-9-2009.

FOR: PALLIATIVE CARE SERVICES, NAMELY, RECOVERY AND AFTERCARE SERVICES
FOR YOUNG ADULTS SUFFERING FROM SUBSTANCE ABUSE; SUBSTANCE ABUSE
TREATMENT SERVICES AND RELATED COUNSELING; BEHAVIORAL HEALTH SER-
VICES, NAMELY, BEHAVIORAL TREATMENT SERVICES FOR YOUNG ADULTS, IN
CLASS 44 (U.S. CLS. 100 AND 101).

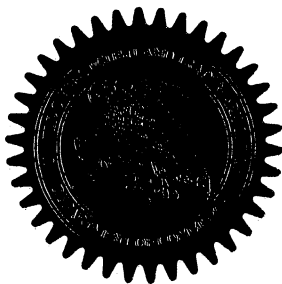
FIRST USE 9-9-2009; IN COMMERCE 9-9-2009.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PAR-
TICULAR FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "RECOVERY" , APART FROM
THE MARK AS SHOWN.

SER. NO. 85-415,746, FILED 9-6-2011.

BENJAMIN OKEKE, EXAMINING ATTORNEY



David J. Kypas

Director of the United States Patent and Trademark Office

EXHIBIT C

United States of America

United States Patent and Trademark Office

BENCHMARK YOUNG ADULT SCHOOL

Reg. No. 4,240,375

Registered Nov. 13, 2012

Int. Cls.: 41, 43 and 44

BENCHMARK YOUNG ADULT SCHOOL, INC. (CALIFORNIA CORPORATION), DBA
BENCHMARK TRANSITIONS
BENCHMARK TRANSITIONS
25612 BARTON ROAD, #286
LOMA LINDA, CA 92354

SERVICE MARK

PRINCIPAL REGISTER

FOR: LIFE COACHING SERVICES FOR YOUNG ADULTS RECOVERING FROM ADDICTION;
EDUCATIONAL SERVICES, NAMELY, GENERAL EDUCATIONAL COURSES AND BEHA-
VIORAL HEALTH SEMINARS AND WORKSHOPS, IN THE FIELD OF SUBSTANCE ABUSE,
IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 8-8-1997; IN COMMERCE 8-8-1997.

FOR: PROVIDING RESIDENTIAL HOMES AND HOUSING FOR AT-RISK CHILDREN AND
YOUTH, NAMELY, RESIDENTIAL, CO-EDUCATIONAL AND THERAPEUTIC TRANSITION-
AL LIVING PROGRAMS FOR YOUNG ADULTS, IN CLASS 43 (U.S. CLS. 100 AND 101).

FIRST USE 8-8-1997; IN COMMERCE 8-8-1997.

FOR: PALLIATIVE CARE SERVICES, NAMELY, RECOVERY AND AFTERCARE SERVICES
FOR YOUNG ADULTS SUFFERING FROM SUBSTANCE ABUSE; SUBSTANCE ABUSE
TREATMENT SERVICES AND RELATED COUNSELING; BEHAVIORAL HEALTH SER-
VICES, NAMELY, BEHAVIORAL TREATMENT SERVICES FOR YOUNG ADULTS, IN
CLASS 44 (U.S. CLS. 100 AND 101).

FIRST USE 8-8-1997; IN COMMERCE 8-8-1997.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PAR-
TICULAR FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "YOUNG ADULT SCHOOL",
APART FROM THE MARK AS SHOWN.

SER. NO. 85-415,523, FILED 9-6-2011.

BENJAMIN OKEKE, EXAMINING ATTORNEY



David J. Kappas

Director of the United States Patent and Trademark Office

EXHIBIT D

United States of America

United States Patent and Trademark Office

BENCHMARK TRANSITIONS LIFE STRATEGIES FOR EMERGING ADULTS

Reg. No. 4,240,380

Registered Nov. 13, 2012

Int. Cls.: 41, 43 and 44

BENCHMARK YOUNG ADULT SCHOOL, INC. (CALIFORNIA CORPORATION), DBA
BENCHMARK TRANSITIONS
BENCHMARK TRANSITIONS
25612 BARTON ROAD, #289
LOMA LINDA, CA 92354

SERVICE MARK

PRINCIPAL REGISTER

FOR: LIFE COACHING SERVICES FOR YOUNG ADULTS RECOVERING FROM ADDICTION;
EDUCATIONAL SERVICES, NAMELY, GENERAL EDUCATIONAL COURSES AND BEHA-
VIORAL HEALTH SEMINARS AND WORKSHOPS, IN THE FIELD OF SUBSTANCE ABUSE,
IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 9-9-2009; IN COMMERCE 9-9-2009.

FOR: PROVIDING RESIDENTIAL HOMES AND HOUSING FOR AT-RISK CHILDREN AND
YOUTH, NAMELY, RESIDENTIAL, CO-EDUCATIONAL AND THERAPEUTIC TRANSITION-
AL LIVING PROGRAMS FOR YOUNG ADULTS, IN CLASS 43 (U.S. CLS. 100 AND 101).

FIRST USE 9-9-2009; IN COMMERCE 9-9-2009.

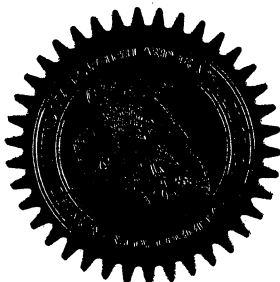
FOR: PALLIATIVE CARE SERVICES, NAMELY, RECOVERY AND AFTERCARE SERVICES
FOR YOUNG ADULTS SUFFERING FROM SUBSTANCE ABUSE; SUBSTANCE ABUSE
TREATMENT SERVICES AND RELATED COUNSELING; BEHAVIORAL HEALTH SER-
VICES, NAMELY, BEHAVIORAL TREATMENT SERVICES FOR YOUNG ADULTS, IN
CLASS 44 (U.S. CLS. 100 AND 101).

FIRST USE 9-9-2009; IN COMMERCE 9-9-2009.

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PAR-
TICULAR FONT, STYLE, SIZE, OR COLOR.

SER. NO. 85-415,677, FILED 9-6-2011.

BENJAMIN OKEKE, EXAMINING ATTORNEY



David J. Kypas

Director of the United States Patent and Trademark Office

EXHIBIT E

United States of America

United States Patent and Trademark Office



Reg. No. 4,236,259

Registered Nov. 6, 2012

Int. Cls.: 41, 43 and 44

SERVICE MARK

PRINCIPAL REGISTER

BENCHMARK YOUNG ADULT SCHOOL, INC. (CALIFORNIA CORPORATION), DBA
BENCHMARK TRANSITIONS
BENCHMARK TRANSITIONS
25612 BARTON ROAD, #286
LOMA LINDA, CA 92354

FOR: LIFE COACHING SERVICES FOR YOUNG ADULTS RECOVERING FROM ADDICTION;
EDUCATIONAL SERVICES, NAMELY, GENERAL EDUCATIONAL COURSES AND BEHA-
VIORAL HEALTH SEMINARS AND WORKSHOPS, IN THE FIELD OF SUBSTANCE ABUSE,
IN CLASS 41 (U.S. CLS. 100, 101 AND 107).

FIRST USE 9-9-2009; IN COMMERCE 9-9-2009.

FOR: PROVIDING RESIDENTIAL HOMES AND HOUSING FOR AT-RISK CHILDREN AND
YOUTH, NAMELY, RESIDENTIAL, CO-EDUCATIONAL AND THERAPEUTIC TRANSITION-
AL LIVING PROGRAMS FOR YOUNG ADULTS, IN CLASS 43 (U.S. CLS. 100 AND 101).

FIRST USE 9-29-2009; IN COMMERCE 9-29-2009.

FOR: PALLIATIVE CARE SERVICES, NAMELY, RECOVERY AND AFTERCARE SERVICES
FOR YOUNG ADULTS SUFFERING FROM SUBSTANCE ABUSE; SUBSTANCE ABUSE
TREATMENT SERVICES AND RELATED COUNSELING; BEHAVIORAL HEALTH SER-
VICES, NAMELY, BEHAVIORAL TREATMENT SERVICES FOR YOUNG ADULTS, IN
CLASS 44 (U.S. CLS. 100 AND 101).

FIRST USE 9-29-2009; IN COMMERCE 9-29-2009.

THE MARK CONSISTS OF THE WORD "BENCHMARK" WITH A LARGER "B" AND "K"
AT THE BEGINNING AND END OF THE WORD, RESPECTIVELY, WITH A SOARING
EAGLE EXTENDING FROM BEHIND THE SECOND HALF OF THE WORD "BENCHMARK".
THE WORD "TRANSITIONS" IS BETWEEN THE "B" AND "K" OF "BENCHMARK" WITH
A LINE BELOW "TRANSITIONS" THE PHRASE, "LIFE STRATEGIES FOR EMERGING
ADULTS" IS BELOW "TRANSITIONS" AND IN BETWEEN THE TWO PARALLEL LINES.



David J. Kyfas

Director of the United States Patent and Trademark Office

SER. NO. 85-415,709, FILED 9-6-2011.

BENJAMIN OKEKE, EXAMINING ATTORNEY

EXHIBIT F

CALL & JENSEN

A PROFESSIONAL CORPORATION

LAWYERS

610 NEWPORT CENTER DRIVE, SUITE 700
NEWPORT BEACH, CALIFORNIA 92660

TELEPHONE (949) 717-3000

FACSIMILE (949) 717-3100

www.calljensen.com

September 6, 2011

OUR FILE NUMBER
BEN06-03

VIA FEDERAL EXPRESS AND E-MAIL

Greg Rolfe
Executive Director
The Mark Houston Recovery Center/Benchmark Recovery
11503 Parsons Road
Manor, TX 78653
Email: recoveryinfo@markhoustonrecovery.com

RE: REBRANDING AS BENCHMARK RECOVERY - INFRINGEMENT

Dear Mr. Rolfe:

I am writing on behalf of my client Benchmark Young Adult School, Inc. d/b/a Benchmark Transitions ("Benchmark"). As you are likely aware, Benchmark has been providing successful residential, co-educational and therapeutic treatment programs and related services for sufferers of substance abuse and addiction for several years. Benchmark has invested extensive amounts of time, money and effort into building its reputation for goodwill related to the services it provides under the BENCHMARK brand. Benchmark is the owner of a family of BENCHMARK trademarks, such as: BENCHMARK YOUNG ADULT SCHOOL, BENCHMARK TRANSITIONS, RECOVERY BY BENCHMARK, to name a few. As a result of Benchmark's longstanding use of its trademarks, consumers have come to associate these services offered under the BENCHMARK name as originating exclusively from Benchmark.

It has come to our attention that The Mark Houston Recovery Center ("Mark Houston Recovery") has announced a rebranding of its business via its website. Specifically, Mark Houston Recovery's website announced that Mark Houston Recovery will become "Benchmark Recovery." See Exhibit A attached showing this announcement. Mark Houston Recovery has announced its use of BENCHMARK RECOVERY and BENCHMARK CENTER in other websites and social media. See Exhibit B showing additional announcements and uses. Finally, we have also been made aware that Mark Houston Recovery plans to attend the upcoming NACD conference under the trade name, BENCHMARK RECOVERY.

We appreciate the many contributions and important work accomplished by Mark Houston over the past several decades in the substance abuse/treatment arena. We presume that the announcement of the re-brand may be your facility's way of starting a new chapter after Mark Houston's death. However, your unauthorized use of BENCHMARK and

Greg Rolfe
The Mark Houston Recovery Center/Benchmark Recovery
September 6, 2011
Page 2

BENCHMARK-related trademarks in the substance abuse/additional treatment services field is likely to cause confusion, mistake or deceive consumers into thinking your programs are affiliated with, endorsed, or otherwise sponsored by Benchmark. Indeed, your unauthorized use of BENCHMARK for virtually identical services constitutes trademark infringement, unfair competition, and violations of related federal and state laws.

Benchmark has been informed of actual confusion between Mark Houston Recovery's re-branded Benchmark Recovery programs, and Benchmark's own programs. To prevent further confusion and potential harm to Benchmark's rights, Benchmark demands that Mark Houston Recovery and its re-branded Benchmark Recovery, and anyone acting in concert with these entities, immediately do the following:

- 1) Cease and forever desist from using BENCHMARK in connection with any residential substance abuse or treatment programs and related facilities or services;
- 2) Cease all efforts to re-brand as BENCHMARK RECOVERY, BENCHMARK CENTER or any confusingly similar name;
- 3) Permanently remove and disable all infringing uses of BENCHMARK in your Mark Houston Recovery website, in social media, and in www.benchmarkcenter.com; and
- 4) Remove Benchmark Recovery as a registrant at NACD (this limitation is not intended to preclude you from re-registering under the Mark Houston Recovery name or another name of your choice that does not include the term BENCHMARK); and
- 5) Refrain from any further marketing/advertising of BENCHMARK RECOVERY, including but not limited to such marketing/advertising at the upcoming NACD conference or elsewhere.

Benchmark is hopeful that by bringing this matter to your attention quickly, you will be able to re-brand under another name with as little disruption to your business as possible. Your immediate response and compliance with Benchmark's reasonable requests will allow us to work toward a resolution without resorting to expensive litigation, the ultimate costs of which could be borne by you. Continued use of marks that infringe Benchmark's intellectual property may constitute willful infringement, which could entitle Benchmark to additional remedies if litigation is necessary. Please contact me **by September 8, 2011**, to confirm your receipt of this letter and your compliance with the above. I can be reached by telephone at (949) 717-3000, by email to dgubernick@calljensen.com, or by mail at the above address.

Greg Rolfe
The Mark Houston Recovery Center/Benchmark Recovery
September 6, 2011
Page 3

Nothing contained in this letter constitutes an express or implied waiver of any rights or remedies of Benchmark, all of which are expressly reserved.

Very truly yours,

A handwritten signature in black ink, appearing to read "Debbie Gubernick", written over a horizontal line.

Debbie Gubernick
For Call & Jensen
A Professional Corporation

DAG:vn
Enclosures

Exhibit A

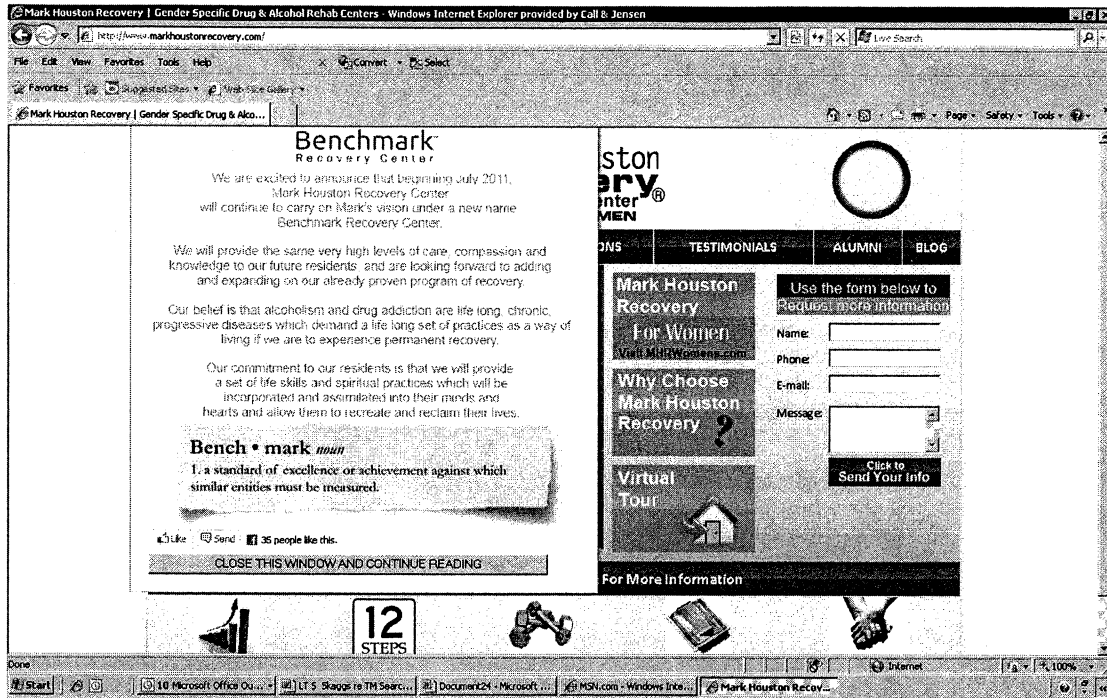


Exhibit B

Benchmark Recovery Center (3) · Windows Internet Explorer provided by Call & Jensen

facebook.com/BenchmarkRecoveryCenter

File Edit View Favorites Tools Help X Convert Select

Benchmark Recovery Center (3)

facebook

Search

Home Profile Account

Benchmark Recovery Center Like

Addiction Resources · Drug/Alcohol Rehab · Recovery Center · Manor, Texas

Benchmark Recovery Center
1-866-905-4550

Wall

Benchmark Recovery Center
Our hearts and prayers go out to all those that have lost homes or been affected by the fires over the past few days. Benchmark Recovery Center has thankfully been far out of the line of danger. Here is a list of places to donate and ways to help: http://www.statesman.com/blog/content/mixed-guy/blog/auit-inflector/articles/2011/09/05/red_cross_list_evacuation_don.html

Red Cross lists evacuation, donation information
www.statesman.com
The website for the American Red Cross of Central Texas lists evacuation centers and information on how to donate to fire victims. Related story: Fire danger continues throughout Central Texas...

Share · 5 hours ago
2 people like this.

Recommendations See All

J.J. Darley Check out our new Facebook Page and show your support!!!!

Friends' Events See All

WATCH ME ON WIPE OUT!!
Tuesday, September 13, 8:00pm-11:00pm
R.S.V.P. Yes No Maybe

Sponsored See All

Chase Official Site
chase.com
Get \$125! Open a Chase Checking Account & Set Up Direct Deposit. Includes Free Access to Over 16,000 Chase ATMs Nationwide. Details

Right Sidebar:


- Amy Salata Rex
- Brooke Gubernick
- Christel Gubernick
- Christina Le Ferguson
- Dustin Gubernick
- Jessamyn Elliott Brown
- Joyce Lewis
- Julie Hays Cox
- Kathleen Larkin Wardle
- Megan Harris
- Nicole Surrait
- Rachel Gerken Weber
- Renee Meyer
- Susan Waataja-Foster
- Tiffany Cornell Gerken

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Done Internet 100%

Dated: July 11, 2014

Respectfully submitted,

By: 
Deborah A. Gubernick

Attorneys for Benchmark Young Adult School, Inc.
CALL & JENSEN
A Professional Corporation
610 Newport Center Drive, Suite 700
Newport Beach, CA 92660
(949) 717-3000
dgubernick@calljensen.com
sshaw@calljensen.com

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing APPLICANT'S MOTION TO SUSPEND OPPOSITON PROCEEDINGS for Opposition No. 91216571 is being served on the Opposer via email and U.S. mail to:

Edward Patrick Swan, Jr.
Jones Day
12265 El Camino Real, Suite 200
San Diego, CA 92130
pswan@jonesday.com

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this Certificate is executed on July 11, 2014.

/Jessamyn Brownell/
Tara Morgan